UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NahShon Jackson

Write the full name of each plaintiff.

16CV 9702

No. ______________
(To be filled out by Clerk's Office)

-against-

Lawrence K. Marks
Tina M. Stanford
Jeff McKoy
Jeffery A. Hale

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

COMPLAINT
(Prisoner)

Do you want a jury trial?
☒ Yes ☐ No

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NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "*Bivens*" action (against federal defendants).

☒ Violation of my federal constitutional rights

☐ Other: ______________________

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

NahShon Jackson

First Name | Middle Initial | Last Name

____

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

DIN 95-A-2578

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Otisville Correctional Facility

Current Place of Detention

57 Sanitorium, P.O. Box 8

Institutional Address

Orange County, Otisville | New York | 10963

County, City | State | Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☒ Other: Parole detainee/expired sentence

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1: Lawrence K. Marks

First Name Last Name Shield #

Chief Administrative Judge, NYS Unified Court System

Current Job Title (or other identifying information)

Office of Court Administration, 25 Beaver Street

Current Work Address

New York, New York City New York 10004

County, City State Zip Code

Defendant 2: Tina M. Stanford

First Name Last Name Shield #

Chairwoman, New York State Board of Parole

Current Job Title (or other identifying information)

NYS Department of Corrections & Community Supervision, 1220 Wash. Ave

Current Work Address

Albany, Albany New York 12226

County, City State Zip Code

Defendant 3: Jeff McKoy, Deputy Commissioner for Programs

First Name Last Name Shield #

NYS Dept. of Corr. & Comm. Supv., 1220 Washington Avenue

Current Job Title (or other identifying information)

Current Work Address

Albany, Albany New York 12226

County, City State Zip Code

Defendant 4: Jeffery A. Hale

First Name Last Name Shield #

Director, Inmate Grievance Program

Current Job Title (or other identifying information)

NYS Dept. of Corr. & Comm. Supv., 1220 Washington Avenue

Current Work Address

Albany, Albany New York 12226

County, City State Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: SEE ATTACHED

Date(s) of occurrence: SEE ATTACHED

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

SEE ATTACHED

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

SEE ATTACHED

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

SEE ATTACHED

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

12/8/2016 — [signature]

Dated — Plaintiff's Signature

NahShon Jackson

First Name — Middle Initial — Last Name

Otisville Correctional Facility, 57 Sanitorium, P.O. Box 8

Prison Address

Orange County, Otisville — New York — 10963

County, City — State — Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: ____________

LEGAL BASIS OF CLAIM

1. Plaintiff is challenging the denial of his constitutional right to petition the New York State Executive and Judicial Departments for a redress of his grievances.

2. Plaintiff is challenging the constitutionality of New York State (i) Parole Board procedures and means used to make a parole eligibility determination without authorization; and (ii) Department of Corrections & Community Supervision ("DOCCS") religious policies and means used to restrict Plaintiff's religious dietary considerations.

3. Plaintiff is also challenging the constitutionality of his conditions of confinement caused by State officers and/or employees failure to correct the constitutional wrong.

PARTIES

4. Plaintiff NahShon Jackson is a sincere adherent of the Rastafarian faith who is currently held in the custody of Kathleen Gerbing, Superintendent of Otisville Correctional Facility. He is confined pursuant to an April 21, 1988 sentence of 40 months to 10 years of imprisonment for First Degree Assault conviction which expired on July 28, 1997.

5. Defendant Lawrence K. Marks is currently holding office as Chief Administrative Judge of the New York State Unified Court System. He is responsible for supervising the administration and operation of the trial courts. He is sued in his individual and official capacities.

6. Defendant Tina M. Stanford is currently holding office as Chairperson of the New York State Board of Parole. She is responsible for the administrative functions and daily operations of the parole board and its staff. She is sued in her individual and official capacities.

7. Defendant Jeff McKoy is currently holding office as Deputy Commissioner of Programs for DOCCS. He is responsible for ensuring that all religious programs and practices are carried out in accordance with the established tenets and practices of the faiths, the United States Constitution, as well as the policies and procedures of DOCCS. He is sued in his official and individual capacities.

8. Defendant Jeffery A. Hale is currently holding office as Director of the New York State DOCCS Inmate Grievance Program (IGP). He is responsible for ensuring implementation of decisions made by DOCCS Central Office Review Committee (CORC). He is sued in his individual and official capacities.

STATEMENT OF CLAIM

Fist Amendment Violation

9. Defendants are preventing Plaintiff from obtaining redress of

his grievance against DOCCS and its employee who are responsible for subjecting Plaintiff to a meaningless ritual of appearing before the Board of Parole every two years for the sole purpose of denying his release and holding him in prison indefinitely.

10. Prior to June 25, 2013, Offender Rehabilitation Coordinator (ORC) Staff at Upstate Correctional Facility obtained, modified and used the New York State Division of Parole Commissioner's Worksheet (Form 9026.2) to make a predetermined parole board decision denying Plaintiff release and holding him in prison for an additional 24 months.

11. On September 16, 2013, Plaintiff filed a grievance complaint (#SS-52668-13) requesting for a declaration that ORC Staff are not authorized to use Form 9026.2 to make parole board decisions denying inmates release and holding them in prison for additional periods of time.

12. On April 30, 2014, CORC unanimously accepted in part Plaintiff's action requested in his grievance complaint.

13. On June 8, 2014, Plaintiff informed Defendant Hale of his legal duty imposed upon him to ensure implementation of the April 30, 2014 CORC decision accepting in part Plaintiff's action requested in his grievance complaint.

14. On June 13, 2014, Defendant Hale acknowledged receipt of Plaintiff's June 8, 2014 correspondence and advised that "this office will not take any action until the Department receives the judicial order directly from the court."

15. On January 11, 2016, Plaintiff petitioned the Supreme COurt of the State of New York for the County of Orange, for a writ of prohibition to prevent the Board of Parole from making a determination of whether Plaintiff should be released on parole for life.

16. Plaintiff cause of action alleges, **inter alia**, that the Board of Parole does not have the power or duty under N.Y. Executive Law § 259-c of determining Plaintiff's release on parole because (i) Plaintiff's April 21, 1988 sentence has expired on July 28, 1997; (ii) no findings has been made by the Board of Parole indicating Plaintiff has been convicted for a new felony committed while on parole supervision; and (iii) no declaration of delinquency has been issued interrupting Plaintiff's April 21, 1988 sentence because no violatoin of parole has been alleged to have occurred on a certain date pursuant to 9 N.Y.C.R.R. § 8004.3(b).

17. Plaintiff requested the Court to declare that the Board of Parole has proceeded without or in excess of jurisdiction by requiring Plaintiff to appear at a parole hearing to determine whether he should be released on parole supervision.

18. Plaintiff requested the Court to convert the Article 78 proceeding into a habeas corpus proceeding under CPLR Article 70 to test the legality of Plaintiff's detention on the basis that there

exist no lawful mandate authorizing Plaintiff's continued confinement.

19. There is no official court record showing the placement of Plaintiff's special proceeding before the Supreme Court for disposition in the matter of NahShon Jackson for a Judgment pursuant to CPLR Article 78 against the Board of Parole, Index No. 421/2016.

20. On or about April 22, 2016, Defendant Marks acknowledged Plaintiff's April 14, 2016 complaint against State Supreme Court Justice Elaine Slobod who unlawfully signed an Order denying Plaintiff's application for a judgment and dismissing the petition.

21. Defendant Marks referred the matter to his Deputy Counsel Barbara Mule to inform Plaintiff that he will not exercise his authority under Section 202.4(c)(5) of the State Uniform Rule for the Supreme Court transferring the special proceeding to another Justice.

22. Defendant Marks knew that Justice Slobod was never assigned to the special proceeding according to a method of random selection authorized by Defendant Marks himself because Plaintiff's request for judicial intervention was never filed or delivered to the Supreme Court Clerk for placement into the official record.

23. Defendant Marks knew that a special proceeding was never commenced in the Supreme Court of Orange County where Plaintiff's Verified Petition was not filed with the Orange County Clerk.

24. On July 12, 2016, Plaintiff submitted a letter to Defendant Marks requesting that he conduct an investigation and issue an Order directing the Orange County Clerk to file Plaintiff's paper so that a special proceeding can be commenced and Plaintiff's right to be heard can be honored.

25. Defendant Marks refused to acknowledge or respond to Plaintiff's request to conduct an investigation and issue an Order to protect Plaintiff's constitutional rights.

26. On September 25, 2016, a letter request was made to Defendant Stanford, pursuant to Executive Law § 259-a(5) that she conduct an investigation to resolve the issue of whether Plaintiff violated the terms of his parole and declared deliquent.

27. On November 1, 2016, Plaintiff's sister Debora Jackson made a letter request to Defendant Stanford that she exercise her authority and conduct a fact-finding investigation.

28. Plaintiff and his sister both explained that an investigation is necessary because without a declaration of delinquency, the Board of Parole does not have authority or jurisdiction to direct that Plaintiff be held in prison for an additional period of time or released on parole.

29. Defendant Stanford refused to either acknowledge or respond to the letter requests made by Plaintiff and his sister.

30. On July 1, 2016, Plaintiff filed a grievance challenging Defendant McKoy's October 19, 2015 approval of Departmental Directive #4202 which authorizes the Correctional Food & Nutritional Services Assistant Director to terminate Plaintiff's approved Cold Alternative Diet (CAD) and replace it with a "Pilot Hot Kosher Menu" without due regard to Plaintiff's clearly established right to a diet consistent with his religious scruples. Grievance #OVF-10736-16.

31. Plaintiff entered an agreement with DOCCS to strictly adhere to a chosen CAD menu that was determined by its Office of Ministerial, Family and Volunteer Services to be appropriate to meet the religious needs of Rastafarian adherents, in which Plaintiff agreed not to eat from any other menu item that is not included in his approved CAD menu.

32. The change was made without any dietary considerations for Rastafarians, in which Plaintiff is currently being denied the provisions of food that satisfies the dictates of his faith and unconstitutionally burden his free exercise rights.

33. On July 21, 2016, the Superintendent of Otisville C.F. denied Plaintiff's grievance without due regard to Plaintiff's First Amendment right to a diet consistent with his religious scruples.

34. Plaintiff appealed the decision to CORC on July 26, 2016, and no decision has been made concerning this matter.

Fourteenth Amendment Violation

35. The refusal of Defendants to take any action on Plaintiff's requests gives rise to constitutionally protected liberty interest in respect to Plaintiff challenging a parole scheme designed to continue his confinement indefinitely without due process of law.

36. The parole scheme involves the admitted practice of the Division of Parole invoking a policy whereby Plaintiff, upon his arrest, may be deprived of his liberty indefinitely without any opportunity to provide bail and without any hearing whatsoever to ascertain whether there be any actual basis for so depriving him of his liberty, other than the fact that he has been accused of a crime by a prosecutor.

37 On September 23, 1992, Plaintiff was released from State prison and placed under the legal jurisdiction of the Division of Parole until July 28, 1997.

38 On November 24, 1992, the parole officer having charge of Plaintiff on parole unlawfully arrested him without a warrant.

39 The parole officer did not report to a member of the Board of Parole, or to any officer of the Division of Parole designated by

the board, that he had reasonable cause to believe that Plaintiff had lapsed into criminal ways or company, or has violated one or more conditions of his parole.

41. The Division of Parole Case Summary and Area/Bureau Analysis indicate that on November 16, 1992 Plaintiff committed the crimes of murder and robbery in Suffolk County, and was held without bail at the Suffolk County Jail, and that the case was pending in Suffolk County Court.

42. The Division of Parole did not issue a warrant for a parole violation because John B. Collins, Jr., Assistant District of Suffolk County, requested that the Division of Parole not file any parole violations against Plaintiff pending court disposition and not conduct a parole revocation hearing until after the criminal case has been completed.

43. No declaration of delinquency has been issued by the Board of Parole interrupting Plaintiff's 1988 sentence because no violation of parole has been alleged to have occurred.

44. Plaintiff never entered a guilty plea to any new charges and was never present during a trial upon an indictment in Suffolk County resulting in a guilty verdict for the crimes of murder and robbery.

45. The parole officer having charge of Plaintiff never submitted a violation of parole report to the Board of Parole alleging that he had reasonable cause to believe that Plaintiff has been convicted of a new crime committed while under his present parole.

46. Plaintiff's parole was never revoked by operation of law where a final declaration of delinquency was never issued by the Board of Parole upon a finding that Plaintiff has been convicted of a new felony committed while under his present parole, and sentenced to an indeterminate term upon such conviction.

47. There is no official court record showing that Plaintiff appeared before a Suffolk County Court and stated his name or identified himself on the record as the defendant for sentencing on a specific date.

48. There is no official court record containing a statement of a clerk or an officer of the court announcing Plaintiff's appearance or presence before a Suffolk County Court for sentencing.

There is no official court record containing an Order of a Suffolk County Judge specifically directing NahShon Jackson to be imprisoned beyond his July 28, 1997 maximum release date, committed to the State Department of Corrections, and delivered to Downstate C.F.

50. On April 18, 1995, Plaintiff was delivered to Downstte C.F. without the authority for the execution of a new sentence and order of commitment by a Suffolk County Court.

51. According to the DOCCS online Inmate Information concerning NahShon Jackson, DIN 95-A-2578, the type of admission to Downstate C.F. on April 18, 1995 was not based on a new commitment, but rather a "RETURN FROM PAROLE/CONDITIONAL RELEASE."

52. DOCCS illegally changed Plaintiff's crime of conviction from Assault in the First Degree to Murder in the 2nd and Robbery in the 1st Degree; and indeterminate sentence from 40 months to 10 years of imprisonment to 25 years to Life of imprisonment.

53. Plaintiff's maximum expiration date of July 28, 1997 was illegally changed to Life, in which DOCCS set Plaintiff's parole eligibility date to July 9, 2013 without legal authorization.

54. Since June 25, 2013, Plaintiff has been subjected to a meaningless ritual of appearing before the Board of Parole every two years for the sole purpose of denying his release and holding him in prison indefinitely.

IMMINENT OF PHYSICAL HARM

55. Plaintiff is currently subjected to cruel and unusual punishment as a result of DOCCS depriving him of food that is nourishing and palatable of a sufficient caloric intake.

56. The "Kosher Pilot Menu" as of December 18, 2015 provides Plaintiff with one CAD meal on Mondays, Wednesdays and Fridays, and two CAD meals on Tuesday, Thursday, Saturday and Sunday.

57. The "Kosher Pilot Menu" also provides food items served to the general inmate population which are not only contrary to Plaintiff's religious belief, but is also forbidden to eat due to Plaintiff exercising his right under DOCCS Directive #4202(XVI) to refrain from eating such food items.

58. As a direct and proximate result of adhering to the provisions of Plaintiff's contract to refrain from eating certain items from the "Pilot Kosher Menu" that is not included in his approved CAD menu, Plaintiff is subject to disciplinary actions, denied one or two meals per day, losing weight and suffering a great deal of stress, thereby putting substantial pressure on him to modify his behavior and to violate his beliefs.

59 Plaintiff observe a strict vegetarian diet called "Ital" which includes prohibitions or the consumption of meat and caffeine and restricts the diet to natural food stuff, that never touches chemicals and served in the rawest form possible, without salts, preservatives, or condiments.

60. DOCCS eliminated from Plaintiff's diet natural foods such as fresh tomato, cabbage, onion, cucumber and lettuce, and replaced them with precooked processed soy products and canned vegetables.

CLAIM FOR RELIEF

61. Defendant Hale's statement that "this office will not take any action until the Department receives the judicial order directly from the court," constitutes a denial of Plaintiff's First Amendment right to petition the Government for a redress of his grievance.

62. A declaration that ORC Staff are not authorized to use Form 9026.2 to make parole board decisions denying inmates release and holding them in prison for additional periods of time, would prove that the Board of Parole did not make a parole decision on the basis that it lack jurisdiction to do so.

63. ORC Staff at Upstate C.F. made a predetermined parole release decision because the Board of Parole is not authorized to determine Plaintiff's release under circumstances where Plaintiff's 1988 sentence has expired on July 28, 1997, and no declaration of delinquency has been issued upon a finding that Plaintiff has been convicted of a new crime committed while on parole supervision.

64. Defendant Marks' referral of Plaintiff's April 14, 2016 complaint against Justice Slobod and refusal to acknowledge Plaintiff's July 12, 2016 letter requesting for an investigation and an Order directing the filing of his papers, constitutes a denial of Plaintiff's First Amendment right to petition the Supreme Court of Orange County for a redress of his grievance.

65. An investigation conducted by Defendant Marks would prove that there is no official record showing the placement of the special proceeding before the Supreme Court of Orange County for disposition of the matter.

66. An Order issued by Defendant Marks directing the Orange County Clerk to file Plaintiff's papers would entitle Plaintiff to equitable relief requiring an impartial Justice to issue a writ of prohibition to prevent the Board of Parole from interviewing Plaintiff and determining his release on or before march 2017 on the grounds that the Board lacks jurisdiction due to the July 28, 1997 maximum expiration date of Plaintiff's April 21, 1988 sentence.

67. The Defendants' refusal to take any action on Plaintiff's requests, including Defendant Stanford, constitutes a denial of Plaintiff's right to due process under the Fourteenth Amendment in respect to the parole scheme which gives rise to constitutionally protected liberty interest.

RELIEF REQUESTED

68. Plaintiff respectfully pray that this Court:

A. ISSUE a declaratory judgment upon concluding that:

I. Offender Rehabilitation Coordinators are not authorized to use Form 9026.2 to make a predetermined parole board decision denying Plaintiff release and holding him in prison for an additional period of time;

II. the Board of Parole is not authorized to determine Plaintiff's release under circumstances where Plaintiff's 1988 sentence has expired on July 28, 1997, and no declaration of delinquency has been issued upon a finding that Plaintiff has been convicted of a new crime committed while on parole supervision;

III. Defendant Stanford has adopted a parole scheme designed to continue Plaintiff's confinement indefinitely without due process of law;

IV. that Defendants' refusal to act on Plaintiff's action requested in his grievances and letter complaints constitutes a violation of his First Amendment right to petition the Government for a redress of his grievances; and

V. Imminent of physical harm will result if DOCCS continue to deprive Plaintiff of his approved CAD menu;

B. Issue a preliminary and permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure enjoining Defendants from:

I. enforcing a parole scheme designed to continue Plaintiff's confinement indefinitely without due process of law; and

II. subjecting Plaintiff to a meaningless ritual of appearing before the Board of Parole every two years for the sole purpose of denying his release and holding him in prison indefinitely.

C. ISSUE an Order directing Defendants to:

I. Comply with Plaintiff's requests made in his letters and grievance complaints;

II. file Plaintiff's CPLR Article 78 petition and papers with the Supreme Court of Orange County; and

III. Provide Plaintiff with his Cold Alternative Diet.

D. GRANT a Judgment awarding Plaintiff punitive damages in the amount of $7,000,000.00 (seven million dollars) for the constitutional wrong deliberately committed by Defendants; and

E. GRANT any such other and further relief this Court may deem appropriate and just.

[signature]
12/8/16

Nahshon Jackson
DIN 95A2578
Otisville Correctional Facility
P.O. Box 8
Otisville, New York 10963

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